IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.527 OF 1993

1.Manubhai Sakarchand Shah)

2.Smt. Kalaben Manubhai Shah)

Both of Bombay, Indian)

Inhabitant, residing at)

Flat No.1, 12th Floor,)

Enterprise Apartments,)

Forjet Hill Road, Tardeo)

Bombay-400 036.)..PETITIONERS

Versus

1. S.K. Lal,)

2. S.C. Tiwari)

3. C.M. Betgani)

Members of the Appropriate)

Authority Constituted under)

the provisions of section)

269 UB of the Income Tax)

Act, 1961 and having their)

office at Mittal Court,)

3rd Floor, "A" Wing, Nariman)

Point, Bombay-400 021.)

4.Union of India)..RESPONDENTS

Mr. Percy J. Pardiwala with Mr. Jitendra Jain and Ms.

Mirashi i/b. Shah & Sanghavi, for the Petitioners

Mr. R.Ashokan with Mr. P.S. Sahadevan, for the respondents.

CORAM : F.I. REBELLO &

J.P. DEVADHAR, JJ.

DATED : 29TH OCTOBER 2007

ORAL JUDGMENT (PER F.I. REBELLO, J.):

. The petitioner entered into an agreement for sale of flat No.1 on the 12th Floor of a building known as Enterprise Apartment, Forjett Hill Road, Tardeo with one Pramod S. Shah and A.S. Shah on 17th September, 1986 for aggregate consideration of Rs.12,98,000/-. From the averments it is seen that initially a sum of Rs.25,000/- was paid and before 1st October, 1986 a further sum of Rs.2,25,000/- was also paid to the Transferor. The petitioners filed an application in Form No.37EE with the Competent Authority. The Competent Authority issued notice under Section 269D(1) asking the parties to show cause as to why the order of acquisition not be passed. The Competent Authority also issued a notice of initiation of acquisition proceedings. The fair market value was fixed at Rs.1,600/- per sq.ft. The Competent Authority cited two sale instances, one of a flat situated at Gold Coin Building at Tardeo and the other a flat situated in a building known as

Wallace Apartment at Sleater Road. The petitioners filed objection and also enclosed a report dated 17th November, 1987 of a registered valuer, pointing out as to how the sale instances cited by the Competent Authority were not comparable. On 31st October, 1988 the Competent Authority passed an order recording satisfaction that it was not a fit case for continuing the proceedings initiated pursuant to the notice under Section 269D(1).

2. As the provisions of Chapter XX-C came into force in respect of transfer of property situated at Mumbai on 1st October, 1986 the petitioners also filed an application in Form 37-1 on 14th October, 1986 before the Appropriate Authority. On 12th December, 1986 the Appropriate Authority passed an order under Section 269UD(1) directing purchase of the flat for a consideration of Rs.12,90,000/-. It is the case of the petitioners that they were not given an opportunity of being heard nor any reason in support of the order wase made available. The petitioners along with the Transferor filed Writ Petition challenging the validity of the order dated 12th December, 1986 as well as the constitutional validity of Chapter XX-C which petition was numbered as Writ Petition No.3560 of 1993. The petition was admitted and an interim order was granted by this Court. The petition was disposed of on 16th December, 1992 pursuant to the decision of the Supreme Court in C.B. Gautam vs. Union of India. The matter was remanded to the Appropriate Authority to decide the issue afresh.

3. On 30th December, 1992 the Appropriate Authority issued a show cause notice to the petitioners as to why the order of purchase in terms of Section 269UD(1) ought not to be made. Along with the show cause notice the copy of the reasons recorded by the Appropriate Authority on 12th December, 1986 in support of the order that was passed was also made available. In the reasons recorded it was stated that the rate at which the petitioners had agreed to purchase the flat at Rs.1000/- per sq.ft. is low having regard to the sale instances. Three sale instances were cited (1) Building known as Windcliffee at Peddar Road, (2) Building known as Ocean Crest at B.D. Road and (3) building known as Vastu at Maulana Gaffar Road, Worli. The petitioners filed a reply to the show cause notice on 8th February, 1993 and made their submissions as to why no order ought to be passed. Apart from the legal objections as to why Chapter XX-C was not applicable they also submitted a report of the registered valuer wherein the valuer had analysed the various comparative sale instances. A fourth sale instance of a flat in the building Enterprise itself was cited and the rates at which those flats have been sold. The flat in Enterprise was sold in May, 1985. the impugned order under Section 269UD(1) came to be passed on 18th February, 1993. The Appropriate Authority directed to purchase the flat by the Central Government for Rs.12,98,000/-. The Authority came to the conclusion that it was Chapter XX-C that would be attracted. Consequently the Competent Authority held that the rate of Rs.1,200/- per sq.ft. at which the petitioners had agreed to purchase the

property was very low. In respect of the contention urged on behalf of the petitioners that the valuation report prepared by the Revenue should be made available the same was answered by holding that it was not necessary to furnish detailed valuation report obtained in the petitioners case as well as to give material in so far as the sale instances of comparative cases relied upon by the Appropriate Authority. For the aforesaid reasons the Appropriate Authority rejected the contention and passed the impugned order. That is the subject matter of the present petition.

4. At the hearing of this petition on behalf of the petitioners it is submitted that they are not raising the issue as to the applicability of Chapter XX-C and they proceed on the presumption that Chapter XX-C would be attracted. It is submitted that considering the provisions of Chapter XX-C itself the impugned order must fail for the following reasons:-

. Firstly it is submitted that the show cause notice was issued based on a valuation report prepared by Revenue, when asked for was not made available to the petitioners.

. Secondly, it is submitted that the sale instances relied upon by the Appropriate Authority when asked for ought to have been made available to the petitioners herein.

. The submission in respect of these two points is that the petitioners herein ought to have been given an

opportunity to file an effective reply to the show cause notice and the reasons given by the Appropriate Authority. In the absence of the same, it is submitted that the order suffers from violation of principles of natural justice and fair play and consequently the order on this count is liable to be quashed and set aside.

. It is next submitted that the Appropriate Authority relied upon the sale instances in respect of the localities which were not comparable vis-a-vis the locality of the flat which was agreed to be purchased by the petitioner. It is also submitted that the sale instance relied upon by the petitioners herein in the same building was rejected as it was not proximate to the agreement for sale.

. It is lastly submitted that the fair market value had not been worked out. The fair market value considering the judgment of the Supreme Court in Gautam's case had to be worked out, considering that notice can be issued only in the event the sale consideration is 50% of the fair market value.

5. On the other hand on behalf of the Respondents their learned Counsel submits that there is no infirmity with the order passed by the Appropriate Authority. It is submitted that considering the sale instances relied upon it would be apparent that the value was more than the value at which the petitioner had agreed to purchase the flat. At any rate considering the market value the consideration at which the

petitioners had agreed to purchased at Rs.1,200/- per sq. would be less. It is, therefore, submitted that even if the valuation report was not made available to the petitioner, the impugned order is not liable to be set aside.

. This petition was admitted by this Court in the year 1993 and by an order dated 9th March, 1993 status quo was ordered. Pursuant to that order the petitioners who were put in possession continue to be in possession of the property.

6. In the first instance once the petitioners had asked for the valuation report, it ought not to have been summarily rejected on the ground that the reasons have been disclosed to the petitioners. The valuation report is a valuable document in as much as, it is that report based upon which the show cause notice was issued considering the fair market value. That document would be necessary to enable the petitioners to show cause as to why the report ought not to have been considered. Secondly, the sale instances relied upon by the Appropriate Authority also ought to have been made available, to enable the petitioners to deal with the sale instances to point out that in terms of location, infrastructure and other facilities why those sale instances were not comparative and could be taken into consideration. This is not mere idle formality. Ultimately the impugned order visits the petitioner with civil consequences. In these circumstances a fair opportunity must be made available to the petitioners before an order

resulting in civil consequences could have been passed. In our opinion in the absence of making available the valuation report and the sale instances there has been failure to comply with the principles of natural justice and fair play and on this ground alone the impugned order is liable to be set aside.

7. We may also consider as to whether the Appropriate Authority was right in holding that the purchase price between the petitioners and their Transferors was below the fair market value. The Appropriate Authority relied upon three sale instances (1) a Flat in Building known as Windcliffee at Peddar Road, (2) Building known as Ocean Crest at B.D. Road and (3) building known as Vastu at Maulana Gaffar Road, Worli Sea Face. The flat is situated at Forgett Street. The valuation report of the petitioners was also available to the Appropriate Authority. The Appropriate Authority was also given sale instances by the petitioners in the same building. Merely because the last sale instance in the building was of May, 1985 by itself could not have been the reason to reject the sake sale instance. The Competent Authority under Chapter XX-A had accepted those sale instances. In our opinion while considering the fair market value it was incumbent on the Appropriate Authority to have dealt with the objections raised by the petitioners as to why the sale instances relied upon by the petitioners were not comparable. In the absence of such exercise vis-a-vis the sale instances cited by the petitioners and the valuation report it would not be

possible to arrive at a fair market value. In the instant case the fair market value has not been determined. Reliance is also placed on the comparative sale instances. In our opinion the order also suffers from vice of non-application of mind. On that count also the impugned order is liable to be set aside.

9. For the aforesaid reasons we are clearly of the opinion that the petition must succeed. In the light of that Rule made absolute in terms of prayer clause (a). In the circumstances of the case there shall be no order as to costs.

(J.P. DEVADHAR, J.) **(F.I. REBELLO**, J)